



STATE OF INDIANA

MICHAEL R. PENCE, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

July 27, 2015

Mr. James Renner
583 Malvern Road
Akron, Ohio 44303

Re: Formal Complaint 15-FC-198; Alleged Violation of Access to Public Records Act by the City of Evansville

Dear Mr. Renner,

This advisory opinion is in response to your formal complaint alleging the City of Evansville ("Evansville"); violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* Evansville has responded to your complaint via Corporation Counsel Mr. Dirck H. Stahl, Esq., of Ziemer, Stayman, Weitzel and Shoulders, Evansville. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on June 22, 2015.

BACKGROUND

In November 2013, you asked for documents related to the employment of a named employee who was the executive director of the Evansville Parks and Recreation from 1976 to 1979. Evansville provided you with documents pursuant to your request, but you believe the documents you were provided with do not complete your request. You then made a formal complaint with the Office of the Public Access Counselor in June 2015.

Evansville responded to your complaint on July 10, 2015. It argues that many of the City's personnel records were damaged and destroyed over the years due to flooding issues. It concedes there are more records than were produced to you, however, certain records are being withheld at the City's discretion.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

Code § 5-14-3-1. The City of Evansville is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1).

Ind. Code § 5-14-5-7 requires that a complaint must be received within thirty (30) days from denial. There is no indication in the records provided that you attempted to reactivate your request or reset the clock within that timeframe, therefore your complaint is technically considered untimely. Nevertheless, for the purposes of clarification, I will issue this opinion for educational purposes.

As for the documents you requested in the employee's personnel file, certain records are releasable at the discretion of the agency pursuant to Ind. Code § 5-14-3-4(b)(8). The following are records of a public employee that must be released:

- (A) the name, compensation, job title, business address, business telephone number, job description, education and training background, previous work experience, or dates of first and last employment of present or former officers or employees of the agency;
- (B) information relating to the status of any formal charges against the employee; and
- (C) the factual basis for a disciplinary action in which final action has been taken and that resulted in the employee being suspended, demoted, or discharged.

All other information in a personnel file can be withheld at the agency's discretion. It appears as if the City has released information disclosable under subsection (b)(8). By enacting this portion of the statute, the Indiana legislature has recognized the balance between the public's right to know what their representative employees are doing and that employee's right to privacy.

Furthermore, you have also identified some records in your request which may not be part of a personnel file but may be housed in another department. Time cards, including leave time, is typically housed with the auditor or finance department and are not necessarily personnel files. Those records are part of payroll and compensation and would not fit under the personnel "exception". Nevertheless, the City has indicated those types of records do not exist. The City searched for them in its Department of Administration to no avail.



STATE OF INDIANA

MICHAEL R. PENCE, Governor

**PUBLIC ACCESS COUNSELOR
LUKE H. BRITT**

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)233-9435
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

The troubling aspect of this situation is the failure of the City to mitigate against destruction or loss of the records. While it is recognized that disasters happen and it is sometimes difficult to protect against every foreseeable potential hazard, a public agency does have the obligation under Ind. Code § 5-14-3-7 to protect against destruction, alterations or loss to public records. The information presented does not indicate whether the City took appropriate precautions to protect the records over the years, however, the City should be mindful of its responsibilities under the APRA and any applicable retention schedules to do so.

Regards,

A handwritten signature in black ink, appearing to read "LHB", is written over a horizontal line.

Luke H. Britt
Public Access Counselor

Cc: Dirck H. Stahl, Esq.